

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed
Revocation of the Child Foster Care
License of Stacey Gray

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis on February 15, 2007 at the Ramsey County Courthouse in St. Paul. David F. MacMillan, Assistant Ramsey County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55102-1556 appeared on behalf of the Ramsey County Community Services Department (Local Agency) and the Minnesota Department of Human Services (Department). Stacey Gray (Licensee, Respondent), 1026 Iglehart Avenue, St. Paul, MN 55104, appeared on her own behalf. The record closed with the receipt of after-filed documents on February 20, 2007.

STATEMENT OF ISSUE

Whether the family foster care license of Stacey Gray should be revoked for her infliction of corporal punishment on a foster child in her care?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Stacey Gray has been licensed for the foster care of children of her relatives since 1997. There have been no earlier incidents of problems with her license or proposed discipline against her before the situation that gives rise to this matter.

2. During the summer of 2004, T.M., Ms. Gray's nephew, was placed in her home as a foster child after spending some time at the Ramsey County Juvenile Detention Center. T.M., who was born in August of 1992, is a very troubled teenager. Prior to arriving at Ms. Gray's residence, T.M. had been placed in several foster care and group home situations, all of which terminated because of his unruly behavior. T.M.'s father (the Licensee's brother) is incarcerated for a long term, and his mother is an abusive alcoholic who is unable to cope with the responsibilities of caring for her children. Behavioral problems exhibited by T.M. include inappropriate touching and use of sexually suggestive language toward young girls, physical abuse of himself (including scratching and cutting), a tendency to lie to others and manipulate other people, violent and physical outbursts of temper (particularly when disciplined) and suicidal ideation.^[1]

3. Between the ages of eight and ten, T.M. was a victim of sexual abuse, including sexual abuse perpetrated against him by his mother.^[2]

4. On November 12, 2005, Ms. Gray, T.M., and three of the Licensee's young grandchildren, two boys aged four and two years and an infant girl, were watching television on Ms. Gray's front porch. It was a Saturday, and Ms. Gray was doing laundry during the time they were all watching television.

5. When it came time for Ms. Gray to leave the room to switch the clothes she was laundering, T.M., who was 13 years old, and the four-year-old boy got into a dispute over possession of a ball. When Ms. Gray returned to the area of her porch, she overheard the four-year-old tell T.M., "Give me my ball." To this, T.M. replied, "I'll give you your ball if you let me suck your dick." Or, "I'll give you your ball if you suck my dick."

6. Upon witnessing the conversation summarized in the preceding Finding, the Licensee lost her temper and yelled at T.M., "What did you just say!?" T.M. replied, "I'm sorry Auntie, I'm sorry Auntie, I didn't mean ...", while backing up and away from the angry Ms. Gray.^[3]

7. In connection with doing the laundry, Ms. Gray had removed T.M.'s 32" leather belt from his pants. She had placed the 1.5 inch-thick belt on a chair near the porch. As soon as the boy began to tell "Auntie" that he was sorry, Ms. Gray picked up the belt and hit the boy with it approximately five times. After the second blow, the child stumbled over the sill between the porch and the living room, and Ms. Gray hit him with the doubled-over belt three times while he was on the ground. During the course of this punishment, Ms. Gray struck T.M. with the leather belt in his face, arms, chest, thigh and lower leg.^[4] The blows delivered by the Licensee left bruises that were visible to medical personnel at St. Paul Children's Hospital 11 days later.^[5]

8. After Ms. Gray delivered the blows with T.M.'s belt, as described in the preceding Finding, she turned her attention to her grandchildren momentarily, and T.M. attempted to run away. He bolted approximately 20 feet across the living room/dining room area and opened the back door, which led to another porch, before Ms. Gray caught him, spun him around by grabbing his face and forehead, twisting the boy's body and stopping his progress. The boy walked back into the main part of the house, but Ms. Gray had scratched him on his forehead and nose to the point where he was bleeding from that contact.

9. The Licensee then called T.M.'s grandmother, who lived nearby, and told her to come over and pick up T.M., "Before I kill him."^[6]

10. The Local Agency investigated the incident described in the preceding Findings, and issued a determination of "Serious Maltreatment-Physical Abuse" against Ms. Gray. The Licensee sought reconsideration, which was denied. The Department of Human Services ultimately upheld the

determinations of the Local Agency, and issued an Order of Revocation against Stacey Gray's license on December 6, 2006. The Department's Order upholds the earlier determination of "Serious Maltreatment-Abuse Resulting in Serious Injury" and disqualified Ms. Gray from direct contact with persons receiving services from her licensed establishment. In the same Order, based on the disqualification imposed on Stacey Gray, her license to provide child foster care was revoked.^[7]

11. Ms. Gray filed a timely appeal from the Department's Order of Revocation.^[8] This hearing process followed. This appeal will decide both the determination of serious maltreatment, resulting in the disqualification against Ms. Gray, and whether it was appropriate to revoke her child foster care license.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 245A.

2. The Notice of Hearing was proper and the Department has fulfilled all procedural requirements.

3. On November 12, 2005, the Licensee physically attacked her nephew/foster child, age 13 at the time, with a leather belt, which attack resulted in severe bruising that was visible at least 11 days after the attack. The imposition of corporal punishment by the Licensee on that date constitutes "Serious Maltreatment" and "Abuse resulting in serious injury" within the meaning of Minn. Stat. § 245C.02, subd. 18(a), and subd. 18(c). Those statutes, read together, include "abuse resulting in serious injury" within the definition of "serious maltreatment" and define "abuse resulting in serious injury" to include "bruising."

4. Minnesota Rule 2960.3080, subp. 8.A.(1), prohibits discipline in the form of corporal punishment against children in the care of Human Services license holders. The rule defines "corporal punishment" to include "rough handling, ... ear or hair pulling, ... slapping, ... hitting, ... or spanking;"

Striking a foster child with a leather belt constitutes "corporal punishment" within the meaning of this rule.

5. Under Minn. Stat. § 245C.14, subd. 4(b)(2), an individual is disqualified from direct contact with persons receiving services from Human Services license holders or entities for a minimum of seven years for serious maltreatment of a minor. The corporal punishment administered by the Licensee against T.M. on November 12, 2005, striking him with a leather belt and causing

severe bruising, constitutes serious maltreatment for which disqualification is imposed under this Statute.

6. Under Minn. Stat. § 245A.07, subd. 3, the Commissioner may revoke a Human Services license if a license holder has a disqualification which has not been set aside.

7. Under Minn. Stat. § 245C.22, subd. 4, the decision not to set aside the maltreatment determination or disqualification against Stacey Gray is appropriate. The sanctions may be set aside if Ms. Gray presents sufficient information to demonstrate that she does not pose a risk of harm to persons served by her foster home. Ms. Gray has not demonstrated by a preponderance of the evidence that she does not pose a risk of harm to foster children, considering the nature and severity of the event that led to her disqualification, the age and vulnerability of the victim of her corporal punishment, the harm suffered by the victim, and insufficient evidence of rehabilitation from her tendency to react violently or in explosive fashion against children she disciplines.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the **REVOCATION** of the Child Foster Care License of Stacey Gray be **AFFIRMED**.

Dated this 22nd day of March, 2007.

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Taped (2 tapes, not transcribed)

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Cal Ludeman, Commissioner, Minnesota Department of Human Services, P. O. Box 64998, St. Paul, MN 55164-0998, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Ms. Gray argues that the Local Agency failed to provide her with appropriate training or guidance regarding behavior management and discipline. However, on the occasions when her license was up for annual review, and when she renewed her placement agreement with Ramsey County, Ms. Gray signed documents that stated clearly that the Agency expected foster parents to "Comply with agency policies prohibiting corporal punishment relying instead upon other constructive methods of discipline."⁹¹ In the "Behavior Management" section of the child foster care annual review document for 2004, the Agency reprinted the portion of Minn. Rules 2960.3080, subp. 8, regarding corporal punishment. It reads:

"A. Child must not be subject to:

(1) corporal punishment, including, but not limited to: rough handling, shoving, ear or hair pulling, shaking, slapping, kicking, biting, pinching, hitting, throwing objects at the child, or spanking;"

Also in the “Behavior Management” section of the 2004 annual review document, Ms. Gray described the discipline/behavior management policy of her home as:

“Loss of privileges, no activities, no television, no telephone and a 10 minute discussion of why they shouldn’t do the things that gets them punished.”^[10]

It is obvious that Ms. Gray was well aware that corporal punishment of foster children was not allowed. And, as laid out in the “Conclusions” part of this Report, corporal punishment can lead to a determination of “Serious Maltreatment-Physical Abuse”, which can result in a disqualification of the license holder and revocation of her license. That is the sequence that was followed in this case, and the record does not support setting aside that result. Minnesota Stat. § 245C.22, subd. 4, was reviewed by the Local Agency, the Department of Human Services and the Administrative Law Judge in this case. That Statute sets the standards to follow for setting aside a disqualification and determining that an individual (in this case, Ms. Gray) has submitted sufficient information to demonstrate that (s)he does not pose a risk of harm to any person served by the licensed program. Subdivision 4(b) of that Statute indicates that, to determine whether an individual has met the burden of proof to demonstrate that (s)he does not pose a risk of harm, the following factors must be considered: (1) the nature, severity and consequences of the event or events that led to the disqualification; ... (3) the age and vulnerability of the victim at the time of the event; (4) the harm suffered by the victim; ... (7) documentation of successful completion by the individual of training or rehabilitation pertinent to the event; and (8) any other information relevant to reconsideration.

The Administrative Law Judge has considered all of the factors listed in the preceding paragraph, and concludes that the evident volatility and explosive nature of the Licensee’s temper still poses a risk of harm to individuals served by her program. The severe and harmful physical punishment inflicted by her use of a belt on an adolescent boy is not outweighed by the Licensee’s recent completion of a training course in “Family Systems & Abuse & Neglect.”^[11]

Ms. Gray pointed out at the hearing that she operated her foster care home, for which she was licensed to treat children to whom she was related, in a fashion whereby discipline was imposed on the foster children in the same way as she imposed discipline on her own children. In this case, while the imposition of corporal punishment may have been something Ms. Gray used with her own children, the statutes and rules that govern foster care licensure in the State of Minnesota have no room for such treatment of foster children. The statements in Exhibits 18, 26 and 27 make it clear that Ms. Gray was reminded of this provision over the years that she was licensed, and her own written statement that she would impose discipline in other ways, written as part of her annual review in 2004, demonstrates further that she was aware that corporal punishment was not allowed.

The Licensee requests that the sudden, isolated outburst of temper that resulted in breaking the rule against corporal punishment be forgiven in this case. Based on a review of the record as a whole, the Administrative Law Judge cannot agree with such a result because Ms. Gray should be sanctioned for the incident, and the purpose of the statute and rules against corporal punishment - protection of children - is served best at this juncture by a revocation of Stacey Gray's license to operate a child foster care facility.

R. C. L.

^[1] Exhibits 28, 29 and 30.

^[2] Exhibit 28.

^[3] Testimony of Stacey Gray.

^[4] Testimony of Stacey Gray.

^[5] Exhibit 7.

^[6] Exhibit 7.

^[7] Exhibit 16.

^[8] Exhibit 17.

^[9] Exhibits 18, 26 and 27.

^[10] Exhibit 27.

^[11] Exhibit 19.